

FILED

MAY 17 2005

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

1 Juan Morgan, pro se

2 ~~Case 77~~

3 Fort Clayton

4 Panama City, Panama

5 011-507-673-4827

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7  
8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF COLUMBIA

CASE NUMBER: 1:05CV0989

JUDGE: ROYCE C. LAMBERTH

DECK TYPE: EMPLOYMENT DISCRIMINATION

DATE: MAY 17, 2005

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11  
12 JUAN MORGAN

13 ~~Case 77~~ PSC 2 BOX 2814

14 ~~Fort Clayton~~ APO AA 34002

15 ~~Panama City, Panama~~

16 011.507.673.4827 Plaintiff,

17 678.571.1419(USA)

18 v.

COMPLAINT

With Jury Demand

19  
20 MIKE JOHANNNS, SECRETARY,  
21 UNITED STATES DEPARTMENT OF  
22 AGRICULTURE  
23 1400 Independence Avenue, S.W.  
24 Washington, DC 20250-1400

25  
26  
27 Defendant.  
28  
29

30 The plaintiff pro se complains of the defendant as follows.

31 1. This court has jurisdiction over this matter as the United States is a party and  
32 plaintiff has filed claims with the defendant and more than 120 days has expired without  
33 a final agency decision.

34 2. Venue is proper in this court as the plaintiff is a non-resident citizen of the  
35 United States.

36 3. Plaintiff is a Hispanic African American Citizen of the United States of who  
37 resides in Panama City, Panama who retired as a Lieutenant Colonel and is a veteran with  
38 more than a 30% service related disability.

1           4. The Defendant Mike Johanns is the Secretary of Agriculture of the United  
2 States here sued in his official capacity. Dr. Angel B. Cielo, Dr. Harold C. Hoffmannn,  
3 Dr. John H. Wyss, Mr. James Swenson, Mr. Ralph H. Iwamoto, Ms. Freita S. Skaggs and  
4 Mr. Craig Fedchock are defendant's management staff who were personally responsible  
5 by omission or commission for the specific acts complained of hereinafter but who were  
6 operating at all times within their management capacity and with the full approval and  
7 knowledge of the defendant's predecessor.

8                           AS AND FOR A FIRST CAUSE OF ACTION

9           5. Plaintiff realleges and restates each and every allegation set forth above as if  
10 set forth in full here.

11           6. On July 2, 2000 plaintiff was hired by the defendant as the financial officer of  
12 the Animal and Plant Health Inspection Service (APHIS), International Service Region 5  
13 with a duty station in Panama City, Panama.

14           7. Despite being entitled to a Career-Candidate or Career appointment due to his  
15 status as a disabled veteran, due to his race and national origin plaintiff was given a  
16 temporary appointment.

17           8. At all times relevant hereto the plaintiff was an experienced financial officer  
18 with extensive and successful experience in diplomatic and military command roles and  
19 was fully capable of performing the tasks assigned to him and did in fact fully perform  
20 such tasks.

21           9. Due to his race and ethnicity however, plaintiff was ostracized by  
22 management, ignored at finance-related meetings, the subject of verbal harassment from  
23 management simply for doing what the directives and federal regulations state he should

1 do. He was ignored when the defendant's staff hired people to work in his department.  
2 Plaintiff was the only management staff not invited to social events and important  
3 meetings. He was the only one in management treated in this manner. He was the only  
4 person of African descent within the US management staff in that office.

5 10. In furtherance of their desire to rid their office of a Hispanic-African  
6 American the defendants supervisors failed to follow any rules and regulations related to  
7 evaluating employees when it came to the plaintiff. APHIS Directive 4430.2 states under  
8 "General Guidelines" that there will be an Annual Assignment and Achievement  
9 Expectations Letter which is to be presented to every employee at the beginning of each  
10 rating period. This letter is developed annually by the supervisor and employee as a  
11 collaborative effort and is signed by both as an indication of their commitment to the  
12 agreement. Without such letter there is no foundation for any evaluation of an  
13 employee's performance. Plaintiff received only one such letter from his immediate  
14 supervisor, Mr. Swenson and it was received long after he was employed and  
15 immediately before his first evaluation by the supervision of the Panama City office.

16 11. Plaintiff's first review was satisfactory.

17 12. Due to his race and ethnicity, no one wanted to deal with the plaintiff and  
18 therefore he was not informed of the identity of his reviewer, i.e. second line supervisor  
19 and therefore had no idea at any time who was responsible for evaluating his  
20 performance. Over the term of plaintiff's employment, supervisors increasingly refused  
21 to communicate with him. In documents generated during the internal investigation of  
22 the plaintiff's claims the management staff could not agree on who plaintiff's reviewer  
23 was. They admitted that no matter who it was at any given time, i.e. who was reviewing

1 the plaintiff; no one ever told the plaintiff who it was. This fact, however, rendered  
2 compliance with regulations absolutely impossible and evidenced the extremely hostile  
3 nature of the work environment the plaintiff was exposed to due to his race and ethnicity.

4 13. Despite having not followed any legally imposed criteria, supervisors within  
5 the Panama City office prepared evaluations of the plaintiff which were increasingly  
6 critical of his performance, conduct and behavior, however, these were prepared by  
7 persons who were not plaintiff's proper reviewer as they had neither clear supervisory  
8 responsibility over the plaintiff nor did they have sufficient involvement with plaintiff to  
9 prepare an accurate review and in all cases after plaintiff's first evaluation, these reviews  
10 were not based upon the plaintiff's performance but were framed to force the plaintiff to  
11 leave the agency due to his race and ethnicity and indeed if they reflected anything they  
12 reflected the effects of the extremely hostile work environment created by the  
13 management of the Panama City office.

14 14. In 2002, plaintiff sought permanent status in the Foreign Service of the  
15 defendant. Upon learning of plaintiff's application, the defendant's management staff in  
16 Panama City with the aid of officials in Rockville went into overdrive to prevent the  
17 plaintiff's appointment. Dr. Hoffmann wrote one of several of what purported to be  
18 evaluations of the plaintiff recommending that he not get a permanent appointment. Dr.  
19 Hoffmann stated that plaintiff was unable to serve the agency due to a lack of diplomatic  
20 skills and due to a major misrepresentation as to the health of plaintiff's daughter, who  
21 was recovering from cancer treatment (indeed, while having to use considerable leave  
22 due to his daughter's battle with cancer, plaintiff continued to supervise his staff and all  
23 work required to discharge his duties was completed competently and on time due to such

1 supervision a fact not mentioned in these reports). Indeed, plaintiff had been promoted to  
2 the rank of Lieutenant Colonel in the United States Army due to his service which  
3 involved diplomatic operations in the same theatre, i.e. Central America and the  
4 Caribbean. He served with great success in assignments which required liaison with host  
5 nations in providing military and other aid, a task similar to the mission of APHIS.  
6 Plaintiff, not only was an experienced diplomat, he was perhaps the most competent  
7 diplomat in the employ of the defendant in Panama. In marked contrast to this racially  
8 and ethnically motivated slander authored by supervisors from the Panama City office, an  
9 outside auditor who observed the operation of the office and the plaintiff's performance  
10 for the Agency, recommended that plaintiff's responsibilities should be significantly  
11 expanded to encompass the entire Caribbean. But within the Panama City office, due to  
12 his status as the only African American - Hispanic on the staff, plaintiff's reports of  
13 unaccounted for funds, funds spent on items of doubtful legitimacy and misconduct in the  
14 office involving fellow officials and a female subordinate were deemed unacceptable and  
15 disruptive even though the plaintiff was lawfully discharging his duties with regard to  
16 these activities. Indeed, after an audit conducted by the plaintiff uncovered large scale  
17 gaps in records of petty cash at several in country offices, rather than address the  
18 problem, plaintiff, due to his race and ethnicity was ordered to cease such audits, a clear  
19 direction not to do his job. APHIS management had expected plaintiff to be a subservient  
20 African American - Hispanic, finance manager whose sole role was to improve the  
21 office's EEO image and who was expected to be willing to forgo regulations so that  
22 members of American APHIS management could ingratiate themselves to in country  
23 personnel and officials who were abusing the program. The comments by Dr. Hoffmann

1 and others were grossly incorrect and malicious and based upon disappointment that  
2 plaintiff, an African American of Hispanic descent was in fact a competent and dedicated  
3 financial officer who insisted on competently doing his job according to the applicable  
4 laws, rules and regulations and who as a competent diplomat was able to do it even with  
5 regard to in country staff.

6 15. Solely due to these slanderous and inaccurate reports, each prepared and  
7 submitted in violation of applicable regulations and in violation of regulations applicable  
8 to the employment of disabled military veterans, plaintiff was denied a permanent foreign  
9 service appointment and his ability to continue with the agency was rendered difficult if  
10 not impossible. This difficulty was increased by the increasingly hostile work  
11 environment created by the management of the Panama City office, joined now by the  
12 complicity of staff in Rockville. The report by Dr. Hoffmann was credited by the  
13 promotion board even though the document itself as well as the evaluations of the  
14 plaintiff in his file conspicuously failed to display compliance with regulations. Dr.  
15 Hoffmann was not the plaintiff's supervisor, had performed none of the necessary steps  
16 to file an evaluation of the plaintiff at any time, and therefore, not only was the report  
17 malicious and slanderous, it was from a person without the status to submit it, all gross  
18 violations of the applicable rules and regulations, which rules and regulations were  
19 ignored at all stages of the evaluation process due to the plaintiff's race and ethnicity.

20 16. From the date that plaintiff sought permanent status, the hostility of the work  
21 environment became absolute. Plaintiff was completely isolated by Agency management  
22 to the point that he was not even aware that he had been rejected for permanent status due  
23 to a reports from Dr. Hoffmann and other management staff for months.

1           17. In addition to the report which denied plaintiff a permanent appointment,  
2 defendant's staff prepared a series of evaluations of the plaintiff which were grossly false  
3 and designed to force the plaintiff out of APHIS. The rules governing the preparation of  
4 such reports require employee participation in the evaluation process, APHIS Directive  
5 4430.2, communication with the employee is an absolutely necessary first step under the  
6 regulations to evaluate anyone. However, not only did the defendant's staff fail to seek  
7 input from the plaintiff in this process, plaintiff was never told who his reviewer was.  
8 Thus, not only were these evaluations not based upon a timely expectations letter, they  
9 were not preceded by mid-year evaluations, they were not preceded by an employee  
10 improvement plan, they were not submitted to plaintiff for his comments or even  
11 discussed with him and they were authored by persons who had not been plaintiff's  
12 reviewer during the period reviewed and whose status was unknown to plaintiff. This  
13 absolute lack of regard for all the applicable federal regulations was due exclusively to  
14 the plaintiff's race and ethnicity which caused his absolute isolation within the Panama  
15 City office of APHIS.

16           18. Due to the strain of going from the United States Army, which is race neutral,  
17 to the defendant, and in particular the APHIS office in Panama City, in which plaintiff's  
18 race and ethnicity caused the defendants to create or tolerate a hostile work environment  
19 which saw the plaintiff ostracized and then his career destroyed by the malicious and  
20 unlawful acts of the defendant's supervisory personnel, plaintiff suffered a nervous break  
21 down and deterioration of his mental health with a related major exacerbation of  
22 conditions related to his preexisting physical disability eventually rendering plaintiff  
23 unemployable.



1           19. Due to the reports prepared and submitted by defendant's supervisors in  
2 Panama City and the complicity of staff in Rockville and due to the defendant's pointed  
3 refusal to deal with the conduct of such supervisors despite notice, defendant terminated  
4 the plaintiff's foreign service appointment and ordered him to return to the United States  
5 to an undefined Civil Service Job in Maryland. Defendant knew, when it took this action,  
6 that the plaintiff would be unable to comply with that demand due to his family situation  
7 and due to his increasingly disabling health problems which health problems were the  
8 direct result of the defendant's discriminatory actions. Despite the defendant's liability  
9 for the plaintiff's disability plaintiff was forced to resign or face a proceeding which  
10 would have resulted in his termination, making his reemployment with any Federal  
11 Agency difficult if not impossible thereafter.

12           20. Plaintiff has been rendered unemployed and unemployable due to the direct  
13 and indirect effects of the defendant's overt discrimination against him due to his race  
14 and national origin. By reason of the above the plaintiff has been damaged in a sum  
15 which can not be established at this time but which is believed to exceed five million  
16 dollars, (\$5,000,000.00) due to loss of pay and the benefits afforded to foreign service  
17 employees and their families as well as due to his resulting physical and mental injuries  
18 and for three hundred thousand (\$300,000.00) on each of the three complaints plaintiff  
19 filed with the defendant seeking in house resolution of the matters here complained of.

20                           AS AND FOR A SECOND CAUSE OF ACTION

21           21. Plaintiff realleges and restates each allegation contained in paragraphs 1-20  
22 above as if set forth here in full.



22. Dr. Angel B. Cielo, Dr. Harold C. Hoffmann, Dr. John H. Wyss, Mr. James Swenson, Mr. Ralph H. Iwamoto, Ms. Freitas S. Skaggs and Mr. Craig Fedchock were at all times acting within their responsibilities as employees of the defendant.

23. The discriminatory and unlawful actions of Dr. Angel B. Cielo, Dr. Harold C. Hoffmann, Dr. John H. Wyss, Mr. James Swenson and Mr. Ralph H. Iwamoto were called to the attention of the defendant on several occasions, which complaints were formal and informal and handled by Ms. Freitas S. Skaggs and Mr. Craig Fedchock. No action was taken by the defendant to deal with the situation in the Panama City office.

24. Dr. Angel B. Cielo, Dr. Harold C. Hoffmann, Dr. John H. Wyss, Mr. James Swenson and Mr. Ralph H. Iwamoto conspired with each other from shortly after the date the plaintiff arrived in the Panama City office of APHIS to force the plaintiff out of the foreign service of the defendant due to his race and ethnicity. No action was taken by Ms. Freitas S. Skaggs and Mr. Craig Fedchock to deal with this matter and indeed at some time, by omission or commission they joined the conspiracy by ignoring the gross violations of defendant's rules and federal laws and regulations involved and taking action to force the plaintiff to resign or face a discharge for cause, fully aware that the "cause" was the direct result of the hostile work environment which arose in the Panama City office due to the plaintiff's race and ethnicity which the defendant had tolerated in gross violation of the law and the aforesaid regulations.

25. Dr. Angel B. Cielo, Dr. Harold C. Hoffmann, Dr. John H. Wyss, Mr. James Swenson and Mr. Ralph H. Iwamoto intentionally conducted a campaign of harassment of the plaintiff, creating an increasingly hostile work environment which included complete isolation, failing to inform him as to who his reviewer was, failing to

1 communicate with him as to any aspect of his work or performance except briefly and in  
2 bad faith when forced to do so due to the recommendation of an outside consultant,  
3 creating and filing untrue reports concerning plaintiff's conduct and performance in  
4 flagrant violation of all applicable federal regulations and defendant's rules, disparaging  
5 of his status, failing to provide him with a written description of his duties, failing to  
6 consult with him on employees hired to work in his department, failing to notify plaintiff  
7 of important management meetings where financial issues which the plaintiff was  
8 responsible for were discussed, contacting plaintiff's staff directly for information within  
9 the plaintiff's area of responsibility and allowing members of plaintiff's staff to be  
10 sexually harassed in the face of the plaintiff's attempts to end such practices by in  
11 country supervision. The defendant's activity was openly hostile to the plaintiff and  
12 designed to cause all employees in the office to know that the plaintiff was to be isolated  
13 and ignored even where they're duties would dictate otherwise, all so that the plaintiff  
14 could be denied permanent status and be terminated from employment.

15       26. All of these actions and inactions were designed to isolate the plaintiff, to  
16 prevent him from discharging his duties and to inform plaintiff's staff and that of the host  
17 country that plaintiff was to be ignored and that his attempts to end abusive financial and  
18 personnel practices were not to be taken seriously.

19       27. Defendant intended to and did inflict mental and resulting physical harm on  
20 the plaintiff.

21       28. By reason of the above and particularly due to the defendant's failure to  
22 respond to formal and informal notice of these activities, the plaintiff has been injured in  
23 a sum which cannot be finally determined now but which is estimated to be no less than

1 five million dollars, (\$5,000,000.00) due to being rendered unemployable and for the  
2 additional sum of three hundred thousand dollars (\$300,000.00) for pain and suffering on  
3 each of the three formal complaints the plaintiff filed within the defendant's EEO process  
4 with regard to these unlawful practices.

5  
6 AS AND FOR A THIRD CAUSE OF ACTION

7 29. Plaintiff realleges and restates each and every allegation contained in  
8 paragraphs 1-26 as if set forth here in full.

9 30. Plaintiff as an employee of the defendant was entitled to the protection of the  
10 defendant's rules and regulations.

11 31. Dr. Angel B. Cielo, Dr. Harold C. Hoffmann, Dr. John H. Wyss, Mr. James  
12 Swenson Mr. Ralph H. Iwamoto, Ms. Freita S. Skaggs and Mr. Craig Fedchok failed  
13 and refused to comply with any of the applicable rules and through a pattern of such  
14 disregard, denied plaintiff a permanent appointment to the Foreign Service of the  
15 defendant.

16 32. Plaintiff has suffered an injury which is of the type the rules were designed to  
17 prevent.

18 33. In contrast the plaintiff has adhered to all applicable rules and has been  
19 denied relief from this injustice by the defendant.

20 34. At all times relevant to this proceeding the plaintiff was fully qualified to be  
21 appointed to the defendant's foreign service and would have received such appointment  
22 and would have advanced within the service, as he had in the United States Army, had  
23 the rules been followed.

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